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ABSTRACT

The National Council for Children's Rights (NCCR) is a child-advocacy group that works to assure a child the right to two parents. This proceedings contains three presentations from the NCCR's fourth annual conference and highlights of the remaining presentations. The proceedings include: (1) a welcoming address by NCCR President David L. Levy, who highlighted the activities, accomplishments, and goals of the council; (2) an overview and the complete text of "When a Parental Alienation Syndrome Is Present," by Richard A. Gardner, which discusses the characteristics of and appropriate approaches to severe, moderate, and mild cases of parental alienation syndrome and offers recommendations for families in which the syndrome is present; (3) "How To Win as a Stepfamily," by Emily Visher and John Visher; (4) "Family Systems Theory," by Michael E. Kerr; (5) "(Partial) Overview of the Family Support Act of 1988," by Ronald K. Haskins; (6) "Evaluation of Sole and Joint Custody Studies," by John L. Bauserman; (7) "An Overview of Access (Visitation) Research," by Anna D. Keller; (8) "Visitation Mediation Service," by Hilda Pemberton and Carolyn Billingsley; (9) "Banana Splits: A School-Based Program for the Survivors of the Divorce Wars," by Elizabeth M. McGonagle; (10) "Redefining the Family: What Is It That Makes a Family a Family?" by Lita Linzer Schwartz; (11) "Open Adoption: A New Way of Blending Families," by Jon R. Ryan; (12) "Litigating for Joint Legal Custody," by Jerry Solomon; (13) "Conflict Resolution: Positive Tools for Effective Results," by Michael L. Oddenino; and (14) a summary and the text of "A Three-Phase Proposal for Resolving Child Custody Disputes without the Utilization of Adversarial Proceedings," by Richard A. Gardner. (AC)

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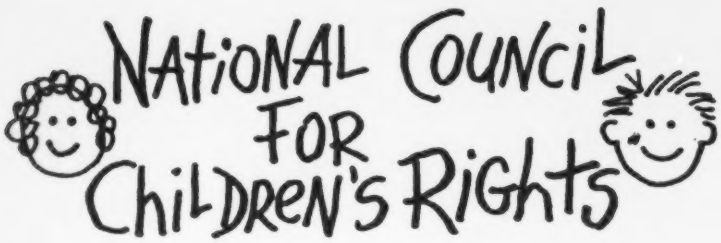

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Presentations at NCCR's Fourth Annual Conference

(submitted by September 24, 1989)

"Children in Divorced Family Systems: New Approaches"

October 13-15, 1989

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Welcome from David L. Levy, President, NCCR

I would like to welcome all of you to the National Council for Children's Rights (NCCR) Fourth Annual Conference.

Some statistics: There are two million marriages each year, and one million divorces. Those divorces affect about one million children each year. In addition, there are about 500,000 children of unwed parents born each year.

Research shows that divorce is a long-time stressor of children. Not only is divorce stressful, but the outcome of such disruption on children is often a lack of adequate parenting in their lives.

Many children of single parents turn out just fine, but generally such parents need help. And their children need help.

Our goal is to strengthen families. We know that much family disruption will continue to occur, but we seek to minimize that disruption for children.

The National Council for Children's Rights (NCCR) is the only Washington, D.C. based child-advocacy group that works to assure a child the right to two parents.

We also work for a child's right to grandparents and extended family.

Conference Theme

The theme of this conference is "Children in Divorced Family Systems: New Approaches."

What are those new approaches?

The newest approach would be for this country to work to assure a child two parents. Our federal government spends $30 billion a year to prop up the single parent family, including welfare, child support enforcement, Head Start, and other programs. Much of this money is well spent, but it only helps to assure a child of one parent.

Virtually nothing is spent to assure a child two parents. What we spend money on we get more of. The more we spend to prop up the single parent family, the more single parent families we can expect.

If we start to divert some of our attention and money to two parent families, we will have more two parent families.

Parent is the operative word here, and parenting, the operative idea.

Money spent on parenting will not produce instant results—the outcome of improved parenting will not be seen for ten or twenty years. But we had better start now, because parenting is prevention, and prevention of problems for children is where the nation's focus ought to be.

Mental health professionals have long been saying that children with two parents generally do better than one parent in terms of having fewer problems with the law and in school.

Criminologists' Viewpoint

And now we find that criminologists are also saying this. Dr. Edith Flynn, professor of Criminal Justice, Northeastern University (Boston), and former vice-president of the American Society of Criminology (Columbus, Ohio), says researchers in criminology are finding that the absence of two role models (one male and one female) has deleterious effects on children's development, their sexual identity, their self-esteem, and may more often than not lead to delinquency and crime.

Clearly, we as a society must do more to assure a child two parents.

NCCR, and all of you at this conference—mental health professionals, lawyers, judges, custody reform advocates, social workers, teachers, writers, parents, grandparents, stepparents—are working to improve conditions for America's children.

And we thank all of you in Washington, and around the country, who are helping NCCR. NCCR has grown a lot in four years. But we need to grow a lot more.

An association in Washington that tracks public interest groups finds that NCCR is stronger at the four-year mark than non-profit groups generally are at four years. The reasons appear to be:

* our nationally prominent advisory panel, (including "Dear Abby", Sen. Dennis DeConcini and Norman Cousins);

* our 25 publications, audio/video cassettes and children's materials that we make available to judges, legislators, mental health pro-

(Continued)

fessionals, NCCR members, and other individuals and groups;

* our testimony seven times before Congressional committees, and frequent testimony elsewhere on ways to strengthen families;

* our annual conferences that draw experts from around the country;

* our new Capitol Hill office at 721 2nd Street N.E.

* our reasonable approach on behalf of children, including sought-for opportunities to network with other child and family-advocacy groups

Successes

We have met with some successes.

* At our urging, Congress has for the first time appropriated federal funds for access (visitation) enforcement;

* At our urging, Prince George's County (Maryland) hired the first access counselor east of Michigan;

* we have won court cases (where we have filed amicus curiae briefs) on the state and federal level;

* we have received praise from legislators, civic groups, and judges for our educational materials;

* we helped the Joint Custody Association of California stop efforts to gut California's important joint custody law;

* we helped Jimmy Boyd and others in Texas to improve Texas law for access and to establish a "Friend of the Court" system in that state;

* we have been thanked by individual parents around the country because our materials have helped them to get joint custody, access, fair child support, or mediation.

* we have seen our materials make more school officials aware of the worth of the "Banana Splits" school-based program begun by Elizabeth McGonagle, of Ballston, Spa, New York

* we have had custody reform groups in various states affiliate with NCCR—a move which is strengthening the custody reform movement nationwide.

* we have prepared the first draft of a "Directory of Organizations" so that you can refer people to helpful services and organizations anywhere in the country where a referral is needed. This Directory is the result of excellent DataBase management by NCCR's John Prior and Ed Mudrak, and the help of others.

Band-aid Mentality

Our country has an epidemic of children at risk. The high numbers of children needing immediate attention has produced a crisis mentality in our cities, hospitals, courts and legislatures.

Our society does not seem able to focus on prevention, but is overwhelmed with the need to provide band-aid remedies;

While we give band-aids to children, we need to focus part of our energy and time on prevention.

That is what NCCR is all about—prevention of problems, and improved parenting.

With your help, we shall all be able to help more and more children and families in the coming years.

We shall have more of the three P's:

1) Parenting courses in the schools and the communities;

2) Parenting through joint custody (co-parenting);

3) Parenting through access (visitation) enforcement;

In addition to the three P's, we are in the process of adding a fourth P, a Political Action Committee, as another way to strengthen our voices. A Kid'S-PAC is long overdue.

Thank you—all.

Psychotherapeutic and Legal Approaches to the Three Types of Parental Alienation Syndrome Families

Richard A. Gardner, M.D.
Clinical Professor of Child Psychiatry, Columbia University, College of Physicians & Surgeons

As the result of his more recent experiences with parental alienation syndrome families, Dr. Gardner has divided them into three types: severe, moderate, and mild. Each type warrants a different approach, both by the court and mental health professionals. In each category these special approaches are described for the mother, father, and children. Emphasis is placed on the special psychotherapeutic techniques required for the treatment of such families, techniques somewhat at variance with traditional therapeutic methods. The role of the guardian ad litem is discussed, with particular focus on the nontraditional role that this person may have to assume. Most important, the necessity of close cooperation between the court and mental health professionals is described; without such collaboration the treatment of these families may prove futile.

Dr. Gardner then discusses the psychologically detrimental effects on PAS children of their having been utilized in the service of their parents' conflict. Particular emphasis will be placed on the psychopathology that results from a child's being programmed into fabricating sex abuse. He then describes what he considers to be the psychopathological effects of the "treatment" of such children by a therapist who is convinced that the child has been abused when, in fact, no such abuse has taken place.

Dr. Gardner then proposes changes in the criteria that are generally utilized for determining parental preference in child custody determinations. His criteria, which he refers to as the *stronger healthy psychological bond presumption*, are not gender biased. They focus primarily on the children's psychological bonds with the parents. Consideration of this factor would reduce significantly the development of the parental alienation syndrome and the fabricated sex-abuse allegations that may accompany it.

When a Parental Alienation Syndrome Is Present

Richard A. Gardner, M.D.

Families in which the children exhibit manifestations of the parental alienation syndrome can be divided into three categories: severe, moderate, and mild. Although there is actually a continuum, and many cases do not fit neatly into one of these categories, the differentiation is still useful—especially with regard to the therapeutic approaches. In each of the three categories not only are the children different, but the mothers as well. It is extremely important that evaluators determine the proper category if they are to provide the most judicious recommendations. In each category I will discuss the mothers, the children, and the appropriate therapeutic approaches. I will use the mother as the example of the preferred parent as this is so in the majority of cases; however, the same considerations apply to the father when he is the favored parent.

I wish to emphasize at this point that in many cases the therapy of these families is not possible without court support. Only the court has the power to order these mothers to stop their manipulations and maneuvering. And it is only the court that has the power to place the children in whichever home would best suit their needs at the particular time. Therapists who embark upon the treatment of such families without such court backing are not likely to be successful. I cannot emphasize this point strongly enough.

Severe Cases of the Parental Alienation Syndrome

The *mothers* of these children are often fanatic.

They will use every mechanism at their disposal (legal and illegal) to prevent visitation. They are obsessed with antagonism toward their husbands. In many cases they are paranoid. Sometimes the paranoid thoughts and feelings about the husband are isolated to him alone; in other cases this paranoia is just one example of many types of paranoid thinking. Often the paranoia did not exhibit itself prior to the breakup of the marriage and may be a manifestation of the psychiatric deterioration that frequently is seen in the context of divorce disputes, especially custody disputes (1986a). Central to the paranoid mechanism is projection. These mothers see in their husbands many noxious qualities that actually exist within themselves. By projecting these unacceptable qualities onto their husbands they can consider themselves innocent victims. When a sex-abuse allegation becomes part of the package, they may be projecting their own sexual inclinations onto him. In the service of this goal they exaggerate and distort any comment the child makes that might justify the accusation. And this is not difficult to do because children normally will entertain sexual fantasies, often of the most bizarre form. I am in agreement with Freud that children are "polymorphous perverse" and they thereby provide these mothers with an ample supply of material to serve as nuclei for their projections and accusations.

Such mothers do not respond to logic, confrontations with reality, or appeals to reason. They will readily believe the most preposterous scenarios. Skilled mental health examiners who claim that there is no evidence for the accusation are dismissed as being against them, or as being paid off by the husband. And this is typical of paranoid thinking: it does not respond to logic and any confrontation that might shake the system is rationalized into the paranoid scenario. Even a court decision that the father is not guilty of the mother's allegations does not alter her beliefs or reduce her commitment to her scenarios of denigration. Energizing the rage is the "hell hath no fury like a woman scorned" phenomenon.

The *children* of these mothers are similarly fanatic. They have joined together with her in a *folie à deux* relationship in which they share her paranoid fantasies about the father. They may become panic-stricken over the prospect of visiting with their father. Their blood-curdling shrieks, panicked states, and hostility may be so severe that visitation is impossible. If placed in the father's home they may run away, become paralyzed with morbid fear, or be so destructive that removal becomes warranted. Unlike children in the moderate and mild categories, their panic and hostility is not reduced in the father's home, even when separated for significant periods.

With regard to the *therapeutic approaches* in this category, traditional therapy for the mother is most often not possible. She is totally unreceptive to treatment and will consider a therapist who believes that her delusions are not warranted to be joining in with her husband. He thereby becomes incorporated into the paranoid system. A court order that she enter into treatment is futile. Judges are often naive with regard to their belief that one can order a person into treatment. this is an extension of their general view of the world that ordering people around is the best way to accomplish something. Most judges are aware that they cannot order an impotent husband to have an erection or a frigid wife to have an orgasm. Yet, they somehow believe that one can order someone to have conviction and commitment to therapy. Accordingly, the evaluator does well to discourage the court from such a misguided order.

Therapy for the children, as well, is most often not possible *while the children are still living in the mother's home.* No matter how many times a week they are seen, the therapeutic exposure represents only a small fraction of the total amount of time of exposure to the mother's denigrations of the father. There is a sick psychological bond here between the mother and children that is not going to be changed by therapy as long as the children remain living with the mother. While still in the mother's home the children are going to be exposed continually to the bombardment of denigration and other influences (overt and covert) that contribute to the perpetuation of the syndrome.

Accordingly, the first stop toward treatment is *removal* of the children from the mother's home and placement in the home of the father, the allegedly hated parent. This may not be accomplished easily and the court might have to threaten sanctions and even jail if the mother does not comply. Following this transfer there must be a period of decompression and debriefing in which the mother has no opportunity at all for input to the children. The hope here is to give the children the opportunity to re-establish the relationship with the alienated father, without significant contamination of the process by the brainwashing mother. Even telephone calls must be strictly prohibited for at least a few weeks, and perhaps longer. Then, according to the therapist's judg-

ment, slowly increasing contacts with the mother may be initiated, starting with monitored telephone calls. The danger here, however, is that these will be used as opportunities for programming the children.

Therefore, this period of slow and judicious renewal of contact between the children and the brainwashing parent must be monitored carefully so as to prevent a recurrence of the disorder. In some cases this may be successful, especially if the mother can see her way clear to entering into meaningful therapy (not often the case for mothers in this category). In extreme cases, one may have to sever the children entirely from the mother for many months or even years. In such cases the children will at least be living with one parent who is healthy. The children will then be in a position to derive the benefits of placement with the father, continuing hostile attitudes toward him notwithstanding. However, my experience has been that in such cases the animosity toward the father gradually becomes reduced. In contrast, if the court is naive enough to allow the children to remain living with such a disturbed mother, then it is likely that there will be lifelong alienation from the father.

With regard to the individual therapeutic work with the fathers, the first step is to explain to them what is happening to their children and help them not to take so seriously the children's professions of hatred. The fathers must be helped to appreciate that a strong, healthy psychological bond has been formed with their children during their formative years and that the children's allegations of hatred are generally a facade. Accordingly, the fathers must be helped to develop a "thick skin." Some fathers become quite discouraged and think seriously about removing themselves entirely from their children, so pained are they by the rejections. Many will even have been given advice (sometimes by well-meaning therapists) to "respect" the children's desires not to see them. This is a grave mistake. Such removal will generally be detrimental to the children. The fathers must be encouraged to keep reaching out, keep telling the children how much they care for them, and divert the children's attention when they are involved in the denigration. At times, it is useful to encourage such fathers to say such things as: "You don't have to talk that way with me now, your mother's not around" and "I don't believe a word of what you're saying. You know and I know that we love one another deeply and that we've had great times together in the past and will have more great times in the future."

Moderate Cases of the Parental Alienation Syndrome

The *mothers* of children in this category are not as fanatic as those in the more severe category, but are more disturbed than those in the mild category (who may not have a psychiatric disturbance). In these cases the rage element is stronger than the paranoid projection contribution. They are able to make some differentiation between allegations that are preposterous and those that are not. There is still, however, a campaign of denigration and a significant desire to withhold the children from the father as a vengeance maneuver. They will find a wide variety of excuses to interfere with or circumvent visitation. They may be unreceptive to complying with court orders; however, they will often comply under great pressure, threats of sanctions, transfer of custody, etc. These mothers are less likely to be paranoid than those in the severe category. When a sex-abuse allegation is brought into the parental alienation syndrome, they will be able to differentiate between the children's preposterous claims and those that may have some validity. Whereas the mothers in the severe category have a sick psychological bond with the children (often a paranoid one), the mothers of children in this category are more likely to have a healthy psychological bond that is being compromised by their rage. The mothers in this category are more likely to have been good child rearers prior to the divorce. In contrast, the mothers in the severe category, even though not significantly disturbed prior to the separation, often have exhibited formidable impairments in child-rearing capacity prior to the separation.

The *children* in this category are less fanatic in their vilification of the father than those in the severe category but more than those in the mild category. They, too, have their campaigns of deprecation of the father, but are much more likely to give up their scenarios when alone with him, especially for long periods. Once removed entirely from their mother's purview, the children generally quiet down, relax their guard, and involve themselves benevolently with their father. A younger child may often need the support of an older one to keep the campaign going. Under such circumstances the older child is serving as a mother surrogate during visitation. The primary motive for the children's scenarios is to maintain the healthy psychological bond with the mother.

With regard to the *therapy* for these families it

is important that *one* therapist be utilized. This is not a situation in which mother should have her therapist, father his therapist, and the children their own. Such a therapeutic program, although seemingly respectful of each party's individual needs, is not likely to work for the treatment of families in which the children exhibit a parental alienation syndrome. Such fractionization reduces communication, sets up antagonistic subsystems within the family, and is thereby likely to intensify and promulgate the pathological interactions which contribute to the parental alienation syndrome. It is also important that the therapist be court ordered and have direct input to the judge. This can often be facilitated by the utilization of a guardian ad litem or a child advocate, who has the opportunity for direct input to the court. The mother must known that any obstructionism on her part will be immediately reported to the judge, either by the therapist or through the guardian ad litem or child advocate. The court must be willing to impose sanctions such as fines or jail. The threat of loss of primary custody can also help such mothers "remember to cooperate."

If the mother has her own therapist, a mutual admiration society may develop in which the therapist (consciously or unconsciously) becomes the mother's champion in the fight. Women in this category have a way of selecting therapists who will support their antagonism toward the father. Most often, the mother chooses a *woman* as a therapist—especially a woman who is herself antagonistic toward men. Typically, the mother's therapist has little, if any, contact with the father and so does not have the opportunity to hear his side of the story. When they do meet with him they typically will be hostile and unsympathetic. Accordingly, the mother and the therapist often develop a folie à deux relationship. Although the court may not wish to stop the mother from seeing this therapist, it does well to prohibit the children from being "treated" by her (as mentioned, rarely a man). Even if the court were to order the mother's therapist to stop treating her, it is likely that she would find another person who would support her position. And this is another reason why I generally do not recommend that the court order a cessation of the mother's treatment with the therapist with whom she is pathologically involved.

The court should order the mother to see the court's therapists, even though her cooperation is not likely to be significant and even though she may be influenced significantly by her own therapist. The court's therapist must have a thick skin and be able to tolerate the shrieks and claims of maltreatment that these children will provide. Doing what children profess they want is not always the same as doing what is best for them. Therapists of the persuasion that they must "respect" their child patients and accede to their wishes, will be doing these children a terrible disservice. These same therapists would not "respect" a child's wish not to have a polio shot, yet they will respect the child's wish not to see a father who shows no significant evidence for abuse, maltreatment, neglect, etc. The therapist does well to recall that prior to the separation the children were likely to have had a good, strong relationship with the father and that strong psychological tiles must still be present. The therapist should view the children's professed animosity as superficial and as designed to ingratiate themselves to the mother. To take the allegations of maltreatment seriously is a terrible disservice to these children. It may contribute to an entrenchment of the parental alienation syndrome and may result in years of, if not lifelong, alienation.

Similarly, when a fabricated (as opposed to bona fide) sex-abuse allegation has been introduced, and if the therapist is convinced that it is false, then he (she) does well not to dwell on these allegations. Typically, over time such false allegations become elaborated and new allegations arise when the earlier ones do not work. It is antitherapeutic to listen to these. Rather, it is therapeutic to say, "That didn't happen! So let's go on and talk about *real* things like your next visit with your father." The therapist must appreciate that the children *need* him to serve as an excuse for visiting with the father. When "forced" to visit with the father they can say to the mother that the therapist is mean, cruel, etc. and that they really do not want to see the father, but the therapist "makes them." And the judge should appreciate he (she) too can serve this function for the children. With a court order, they can say to their mother, "I really hate my father, but that stupid judge is making me see him."

The therapist must also appreciate that older children may promulgate the mother's programming down to younger ones. And the older children are especially likely to do this during visits with the father. The mother thereby relies on her accomplice to "work over" the younger ones when in the enemy camp (the father's house). These older children may even mastermind "inside jobs" in the father's house. Accordingly, a "divide and

conquer" approach sometimes is warranted. This is best accomplished by requiring the children to visit separately—or at least separate from the older sibling programmer—until they all have had the living experience (including the mother) that the terrible consequences of being alone with the father were not realized. For example, an older sister may be programming her two younger brothers into believing that the father is dangerous and/or noxious, when they themselves exhibit only mild manifestations of a parental alienation syndrome. When they visit with the father and relax their guard she may quickly remind them about the indignities they are likely to suffer under such circumstances. Structuring the visitations so that the sister visits separately from her brothers (at least for a time) is the most effective way of dealing with this kind of problem. This is a good example of an important aspect of the therapy of these families, namely, that less is done via the attempt to get people to gain insight and much more is accomplished by structuring situations and providing individuals with actual experiences.

Transition periods, that is the points when the children are transferred from mother to father, may be especially difficult for children with parental alienation syndrome. It is then (when both parents and the children are together) that the loyalty conflicts become most intense and the symptoms most severe. Accordingly, it is not a good idea to have the father pick up the children at the mother's home. In that setting—with the mother directly observing the children—they are most likely to resist going with their father and will predictably gain their mother's support (overt or covert) for their resistance. Alternative transitional arrangements must therefore be devised, arrangements that do not place the children in a situation in which they are with mother and father at the same time.

A good transition place is the therapist's office. The mother brings the children and then goes home; subsequently the father comes and picks them up. Or a truly impartial intermediary, with whom the children have a good relationship, can pick the children up at the mother's home and bring them to the father's home. A therapist, guardian ad litem, or child advocate can serve in this role.

Once the court has made a final decision that the children shall remain living with their mother, then the children are able to dispense with their scenarios of deprecation. This is a very important point. The children develop their campaigns of denigration in the desire to maintain the psychological bond with the mother. The custody litigation has threatened a disruption of this bond. Once the court has ruled that the children shall remain living primarily with their mother they can relax and allow themselves to enjoy a more benevolent relationship with their father. In short, the court's order obviates the need for the symptoms and so they can be dispensed with.

I have been involved in a number of cases in which mothers in this category would suddenly become "homesick," after many years of comfortable adjustment in the state in which the children were raised. Some suddenly decided that they wanted to remove themselves (and children, of course) from the scene (including the whole state) where the family resided and "start all over" and/or "find themselves" at some remote place. A few claimed better job opportunities in another state. It would be an error for the examiner to take these arguments seriously. Rather, the court should be advised to inform the mother that she is free to leave the state at any time she wishes; however, she should understand that if she does so it will *not* be with the children. And such a position can be included in the evaluator's recommendations.

Whereas mothers in the severe category are not likely to be candidates for treatment, some mothers in the moderate category may indeed involve themselves meaningfully in the therapeutic process. I believe it is preferable for the court-ordered therapist to work with the mother in dealing with her underlying problems. However, working with a separate therapist—who does not support her distortions—may be useful. It is crucial that the mother's therapist not be in the aforementioned category of person (more often a woman) who joins with the mother in her delusions about the father. Sometimes a central element in the mother's rage is the fact that the father has established a new relationship and she has not done so. Her jealousy is a contributing factor to her program of wreaking vengeance on her former husband by attempting to deprive him of his children, his most treasured possessions. Another factor that often contributes to the campaign of animosity is the mother's desire to maintain a relationship with her former husband. The tumultuous activity guarantees ongoing involvement, accusation and counteraccusation, attack and counterattack, and so on. Most people, when confronted with a choice between total abandonment and hostile involvement, would choose the acrimonious relationship. And these mothers demonstrate this point well. To the

degree that one can help her "pick up the pieces of her life" and form new involvements and interests, one is likely to reduce the rage. The most therapeutic experience such a woman can have is meeting a new man with whom she becomes deeply involved and forming a strong relationship.

The therapeutic approach to the fathers in this category are similar to those utilized with fathers in the first category. One must explain to them what is happening and help them "thicken their skins." They must be helped not to take so seriously the children's vilifications. They must be helped to divert them to healthier interchanges and not dwell on whether a particular allegation is true or false. They must be helped to provide the children with healthy living experiences—which are the most effective antidotes to the delusions regarding his noxious and/or dangerous qualities.

When working individually with the children they must be discouraged from "buttering up" each parent and saying to each what they think that one wants to hear at the moment, regardless of the consequences. The therapist should express his incredulity over the children's vilification of the father. They should not take seriously the children's false allegations and quickly move on to other subjects. However, following visits with the father, they should emphasize to the children that their view of their father as an ogre was not realized during the visitation. This is much more likely to be done in family sessions that in individual sessions. The therapist does well to appreciate that as long as the litigation goes on direct work with the children will be difficult and complete alleviation of symptoms may not be possible. Accordingly, in communications to the judge the therapist should be ever reminding him (her) of the fact that the longer the litigation goes on the less the likelihood the treatment will be successful.

The therapist does well to try to find some healthy "insider" on the mother's side of the family. Sometimes the mother's mother and/or father can serve in this capacity. On occasion it might be a mother's brother or sister. Here, one is looking for a person who is aware that the mother is "going too far" with regard to the animosity that she has toward her husband and is fostering the children's alienation from him. If a good relationship existed between the father's parents and the mother's parents prior to the separation, the therapist might prevail upon the father's parents to speak with the mother's parents. Sometimes family meetings in which all four grandparents are present—with the mother and father—can be useful in this regard. The mother's mother can be a very powerful therapeutic ally if the therapist is able to enlist her services. I cannot emphasize strongly enough the importance of the therapist's attempting to find such an ally on the mother's side of the family. That individual can sometimes bring the mother to her senses and effectively prevail upon her to "loosen up" and appreciate how detrimental her maneuvers are to her children. Many parties who are appreciative of the mother's injudicious behavior take the position of "not wanting to get involved." The therapist does well to attempt to have access to such people and to impress upon them that their neutrality may be a terrible disservice to the children. I have no problem eliciting guilt in such individuals if it will serve the purpose of facilitating their involvement in the therapeutic process.

Not all therapists are suited to work with such families. As mentioned, they must have "thick skins" to tolerate the children's antics as they claim that they are being exposed to terrible traumas and indignities in their fathers' homes. They must also be people who are comfortable with taking a somewhat dictatorial position. And this is especially important in their relationship with the mothers of these children. The therapist must appreciate that more of the therapy relates to manipulating and structuring situations than providing people with insight. To the degree that the therapist can provide people with living experiences, to that degree they will alter false perceptions. Therapists with a strong orientation toward psychoanalytic inquiry are generally not qualified to conduct such treatment. I am a psychoanalyst myself and involve most of my adult patients in psychoanalytic therapy. However, when a parental alienation syndrome is present the therapeutic approach must *first* involve a significant degree of people manipulation (usually the court order) and structure before one can sit down and talk meaningfully with the parties involved. Moreover, therapists who accept as valid the patient's wishes (whether child or adult) and consider it therapeutically contraindicated to pressure or coerce a patient are also not candidates to serve such families. I too consider myself sensitive to the needs of my patients. As mentioned, doing what the patient *wants* and doing what the patient *needs* may be two entirely different things. It is for this reason that the courts play such an important role in the treatment of families in which a parental alienation

syndrome is present. Without the therapist's having the court's power to bring about the various manipulations and structural changes, the therapist is not likely to be possible.

Mild Cases of the Parental Alienation Syndrome

The *mothers* of children in this category generally have a healthy psychological bond with the children. These mothers may recognize that gender egalitarianism in custody disputes is a disservice to children, but are healthy enough not to involve themselves in significant degrees of courtroom litigation in order to gain primary custody. These mothers recognize that alienation from the father is not in the best interests of their children and are willing to take a more conciliatory approach to the father's requests. They either go along with a joint custodial compromise or even allow (albeit reluctantly) the father to have sole custody with their having a liberal visitation program. Although these mothers believe it would be in the best interests of the children to remain with them, they recognize that protracted litigation is going to cause all family members to suffer more grief than an injudicious custody arrangement, namely, one in which the father has more involvement (either sole or joint custody) than they consider warranted. However, we may still see some manifestations of programming in these mothers in order to strengthen their positions. There is no paranoia here, but there is anger and there may be some desire for vengeance. The motive for programming the children, however, is less likely to be vengeance than it is merely to entrench their positions in an egalitarian situation. Of the three categories of mothers, these mothers have generally been the most dedicated ones during the earliest years of their children's lives and have thereby developed the strongest and healthiest psychological bonds with them.

The *children* in this category also develop their own scenarios, again with the slight prodding of the mother. Here the children's primary motive is to strengthen the mother's position in the custody dispute in order to maintain the stronger healthy psychological bond that they have with their mothers. These are the children who are most likely to be ambivalent about visitation and are most free to express affection for their fathers, even in their mothers' presence.

With regard to *therapy*, in most cases therapy is *not* necessary. What these children need is a final court order confirming that they will remain living primarily with their mother and there will be threat of their being transferred to their father. This usually brings about a "cure" of the parental alienation syndrome. If the children need therapy it is for other things, possibly related to the divorce animosities.

Concluding Comments Regarding Recommendations for Families in which a Parental Alienation Syndrome is Present

My purpose in this section has been to provide mental health practitioners with guidelines for advising courts on how to deal with parental alienation children and their families. As mentioned, without proper placement of the child (for which a court order may be necessary), treatment may be futile. In the majority of cases of parental alienation syndrome, it is the mother who is favored and the father who is denigrated. However, there are certainly situations in which the mother is deprecated and the father favored. For simplicity of presentation, and because mothers are more often the favored parent, I have used her as the example of the preferred parent—but recognize that in some cases it is the father who is preferred and the one who may be programming the child and it is the mother who is the despised parent. In such cases the fathers should be divided into the aforementioned categories and given the same considerations as described for mothers.

I recognize that the division of these families into three categories is somewhat artificial. In reality, we have a continuum from very severe cases to very mild cases. However, the distinctions are valid and extremely important if one is to make proper therapeutic recommendations. It is especially vital for the examiner to make every attempt to differentiate between mothers in category one (severe) and those in category two (moderate). The former mothers are often so disturbed that custody should be transferred. The latter mothers, their antics notwithstanding, generally still serve better as the primary parent.

Last, a special comment about the guardian ad litem. In most of the custody evaluations I conducted, I found the guardian ad litem to be useful. He (she) could generally be relied upon to assist in obtaining documents that a parent might have been hesitant to provide or to enlist the court's assistance in getting reluctant parents to cooperate in the evaluation. The guardian ad litem can be a powerful ally for therapists treating families

in which a parental alienation syndrome is present. However, there is a definite risk in recommending that the court appoint such a person. A guardian ad litem who is not familiar with the causes, manifestations, and proper treatment of children in this category may prove a definite impediment in the court of treatment. The guardian ad litem generally takes pride in supporting the children's needs. Unfortunately, many are naive and reflexly support the children's positions. They may not appreciate that they are thereby promulgating the pathology. Some have great difficulty supporting coercive maneuvers (such as insisting that the children visit with a father who they profess they have) because it goes so much against their traditional orientation to clients in which they often reflexly align themselves with their client's cause. For guardians ad litem to effectively work with families of parental alienation syndrome children, they must accommodate themselves to this new orientation toward their clients. Accordingly, evaluators do well, when recommending a guardian ad litem, to impress upon the court the importance of securing an individual who has significant familiarity working with these families.

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How To Win as a Stepfamily

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A stepfamily can be defined as a household in which there is an adult couple one of whom has a child from a previous relationship. Since over a third of the marriages in the United States involve at least one adult who has been married before, 60% of whom have had children, demographers estimate that in ten years time stepfamilies will be the predominant type of American family.

There are a number of myths about stepfamilies, an important one being that it is a copy of the idealized first marriage or nuclear family. In actual fact it is quite different in its structure. A few of the differences are: It is formed following profound loss, mainly a death or divorce; parent/child relationships have exited long than that of the new couple; and children have a parent in another household, and may move back and forth between their two households. Unfortunately, neither society nor many of the adults who are establishing stepfamilies have thought through the personal and societal implications of this family structure. Sometimes the children are more aware of the differences than are the adults.

The sociologist, Andrew Cherlin, believes that stress is caused in stepfamilies because of the "incomplete institutionalization" of stepfamilies in our society. There are few educational courses for stepfamilies, stepparents are neglected legally, and by churches and schools, as well as other institutions. Stress also arises because of personal unrealistic expectations due in large part to lack of knowledge.

We are fortunate that clinical observation and empirical research has begun to provide many helpful guidelines for those involved in the usually lengthy process of transition from other households to a satisfactorily integrated stepfamily household. Remarriage can provide happiness for adults and children, particularly when the new relationships in the household are adequately nurtured, when the already existing parent/child bonds are maintained, and when a working relationship is created between the children's two households. The following five guidelines can be of help to members of stepfamilies:

1) The couple relationship is of primary importance. It is the strength of the couple bond that basically determines the viability and even the continued survival of the family unit, protecting everyone from the further trauma of another divorce. In addition the children can learn ways of being in a couple relationship that can serve as an important model for them as they grow and mature. With the swirl of feelings and the continuous bombardment of new situations to master, couples need to consciously set times and special places for the two of them to be together, talk together, and have fun together.

2) Parents need to maintain and nourish their relationships with their children. Allowing the children to express their sadness and anger at all

the changes over which they have had no control, and giving them control over aspects of their own lives is often helpful; being the adult to enforce the house rules until the new step relationships have been developed is important because initially it is the parent, not the stepparent, whom children wish to please; and having regular times, not necessarily lengthy ones, during which parent and child can have a good time together gives the child the assurance that this important relationship is still intact and healthy.

3) There are many satisfactory roles for stepparents that depend on the age of the children and the particular needs of both the children and the stepparent. These roles may vary from being an adult friend of an adolescent to becoming a primary parenting figure for a younger child. Giving children the message that the stepparent is a valuable addition to the child's family, but not a replacement for the same-sexed biological parent, can reduce children's anxiety about losing contact with their other parent. Indeed, being in contact with their parent in their other household has been found to improve a stepchild's bonding with a stepparent. Following the children's lead in what they call their stepparent also helps since it does not raise loyalty issues for the children. Above all, one should keep in mind that it takes time to build caring and/or loving bonds between people.

4) A sense of belonging to a group grows from positive shared memories and familiarity with the way things are done. Developing daily rituals and combining or creating new traditions for the household can have a profound effect on the comfort of the individuals in the household. Going out for pizza every Thursday night, planning special birthday parties, and celebrating Thanksgiving with turkey and apple pie (though it may not be on the calendar day because the children are at their other household that day) all can create a web of expectations and a connectedness between the people in the household.

5) The children's self esteem and security and the adults emotional well being is enhanced when a working relationship between the children's households is developed and there is a spirit of cooperation rather than competition between all the parenting adults. At the same time that privacy and separateness of households is important, a business-type relationship sometimes called a parenting coalition can be created. Then the adults can share the tasks of raising the children and do not experience the energy drain that often accompanies the negative emotional climate of households at war with one another. As far as the children are concerned, when all the adults they love and care about are cooperative, their spirits soar, their loyalty conflicts are diminished, and they can experience the many positives of stepfamily life—diversity, new caring relationships, more models to learn form, and as one stepchild put it, "more adults to love me."

Family Systems Theory

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Family systems theory was developed during the 1950s and early 1960s by psychiatrist Murray Bowen. The theory is anchored in similarities in emotional functioning and behavior that exist between human beings and other forms of life. Bowen anchored his theory in the natural sciences on the assumption that human behavior could become a science. This emphasis on man as a part of all life does not discount his uniqueness.

The family is conceptualized to be a "system" because a change in the emotional functioning of one family member predictably leads to compensatory changes in the emotional functioning of other family members. This interdependence of functioning is not caused by one person, but created by the participation of all. Emotions and feelings, and subjective attitudes about how oneself and others "should be" fuel the process. The way family members adjust to each other's needs, expectations, and dependencies can result, particularly during periods of heightened anxiety, in distance, conflict, and clinical symptoms. The family member most vulnerable to symptoms is the one making the most adjustments to relieve anxiety in others.

Bowen has defined a family as "the total number of individuals attached to an emotional nu-

cleus." This definition encompasses all types of "nuclear" families, whether they be one-parent, two-parent, or three-generational. The emotional nucleus is that person or people whose moods, attitudes, beliefs, values, and behavior most influence the group. Any nuclear family is molded by the multigenerational families from which it was spawned. Patterns of emotional functioning are replicated through the generations with remarkable predictability. The predictability is derived from much more than genetic inheritance. It is anchored in all the components that govern the way family members interact.

Differences in emotional functioning among individuals and families are described by the concept of "differentiation of self." The most poorly differentiated people are so in need of acceptance and approval, so reactive to the moods and feelings of others, and so unsure of what they think or believe that their lives are totally governed by what others say and do. Such people have so much chronic anxiety that daily activities are consumed with efforts to manage it. Chronic psychosis, extreme forms of alcohol and drug addiction, and a nomadic existence can be considered ways of managing anxiety. The intense emotional reactivity of poorly differentiated people, which can take the form of volcanic eruptions of feelings or of profound periods of withdrawal, precludes stable relationships.

The most differentiated people generally live the most orderly and problem-free lives. They have well-defined "selfs," which give them an unusual ability to think for themselves and to make decisions. They can be leaders both in their private and public lives without being dogmatic or reactionary. They can represent a viewpoint without being emotionally invested in changing others. They can also respect a viewpoint different from their own without attacking or dismissing it. Well differentiated people may change their beliefs and values, but the change comes from within rather than from pressure in the relationship system. They have an unusual tolerance for feelings and anxiety within themselves and others. It permits free expression of both feelings and thoughts in their relationships. Their relationships are more stable because they are not undercut by excessive emotional needs and undue allergies to the dependency of others. Well differentiated people are vulnerable to clinical illnesses and other life problems, but, being adaptive, problems tend to be less severe and recovery is more rapid and complete.

All people fall somewhere on a continuum between the well differentiated and poorly differentiated extremes, a continuum referred to as the "scale of differentiation." The scale is of theoretical importance and not an instrument that provides exact assessments. The midpoint on the scale marks the place where people begin to use intellectual principle to override emotional, feeling, and subjective reactions when it is important to do so. Each increment above the midpoint is reflected in more capacity to do this. Each increment below the midpoint is reflected in individual functioning being governed more by feelings and the automatic urge to relieve anxiety. Intellectual principle is overridden in favor of gaining approval and acceptance. The more this is the case, the more an individual is buffeted by the relationship system. Intellectual principles and beliefs in people below the midpoint are usually adopted to please others, so they do not withstand the groupthink. It is easier to be an ideological chameleon.

An individual's level of differentiation is largely determined by his childhood family relationships. All children in the same family grow up to have levels similar to their parents. However, some differences in differentiation levels exist among siblings. The differences are linked to the basic patterns of emotional functioning that characterize a nuclear family.

The theory posits that people who marry have identical levels of differentiation of self. In other words, each partner brings an equal amount of "undifferentiation" into the marriage. In all families, the undifferentiation gets "bound" in a finite number of patterns of emotional functioning. The patterns are as follows: (1) emotional distance, (2) marital conflict, (3) dysfunction in a spouse, and (4) overinvolvement with a child. Most families manifest some degree of all these patterns, but families differ in the patterns that are dominant. The more undifferentiation bound in one pattern, the less that needs to be bound in others. If parents stay focused on trying to change each other (marital conflict), they put less energy into trying to change their children. This makes it easier for the children to form a "self" that is distinct from the parents. If parents bypass dealing with each other, their anxieties and needs tend to get focused on their children. In that case the children grow up as reactors to the parents, adapting to parental anxiety or rebelling against it. A chronic physical, emotional, or social illness in a parent can "bind" considerable undifferentiation.

All children in the same family do not get

equally embroiled in the family's undifferentiation. The more one child functions to stabilize the parents and their relationship, the more it frees his or her siblings. The child most involved in the parental problem develops a level of differentiation somewhat lower than his or her parents, but the "freer" children can develop levels similar to or somewhat above the parents. This is part of the reason siblings do not react the same way to a divorce. The less differentiated child is more likely to take sides, to blame himself or herself, or even to develop symptoms. A more differentiated child can view the situation a little more objectively and, as a consequence, adapt more successfully. A divorce can complicate the situation for the most involved child because he may become even more of a focus of parental needs and anxieties.

Each parent's relationship with his or her extended family is another critically important variable in the functioning of a nuclear family. The more people cut off from the past generations and focus their energy on the present and future generations, the more likely they are to accentuate the problems of the past. The more people can see their part in the unresolved attachments to their original families, the more sense it makes not to cut off from them. Needs for others to be a certain way to satisfy oneself, anxieties about the expectations and dependencies of others, fears about responsibility and decision-making, and being overly sure or overly uncertain about one's own point of view are all connected to the undifferentiation that comes out of the multigenerational past. Knowledge of the past and an ability to maintain connections with it help assure the future.

Human beings appear to be the only species that can reflect on its own emotionally-based behavior. Knowledge gives man some control over his destiny. Decisions can be made that guarantee the long-term future rather than just relieve the anxiety of the moment. A structured, long-term effort can result in a change in level of differentiation. The success of such an effort depends on an ability to see the relationship system as a whole rather than to blame one or a few people for what goes on. Action based on knowledge of the system and one's own part in it can have a constructive effect on others as well as on oneself. The key is not to cut off from the other, but to change oneself while in relationship to the other.

I. (Partial) Overview of the Family Support Act of 1988

Submitted by Ronald K. Haskins, Minority Staff, Ways and Means Committee, U.S. House of Representatives

A. Child Support and the Establishment of Paternity

- Requires that judges and other officials use State guidelines as set child support awards.
- Requires States to make all parties in a contested paternity case take a genetic test if requested by any party, and provides a Federal matching rate of 90 percent.
- Requires that States implement a computerized tracking and monitoring system for child support enforcement, and provides a Federal matching rate of 90 percent.
- Requires States to automatically withhold child support payments from the wages of a noncustodial parent, unless there is good cause not to require withholding or a written agreement between both parents. For AFDC families, this requirement applies to child support orders issued or modified 25 months after enactment. For non-AFDC families, this requirement applies to all orders initially issued on or after January 1, 1994.

B. The Job Opportunities and Basic Skills Training (JOBS) Program (Not included in this partial overview)

C. Supportive Assistance for Families Working to Leave Welfare

- Requires that States guarantee child care if it is necessary for employment or education and training activities, and provides Federal matching funds at the Medicaid rate.
- Requires that States reimburse JOBS participants for necessary transportation and other work-related supportive services, and provides Federal matching funds at a 50 percent rate (subject to the cap on JOBS funding).

- Raises the earned income disregard from $75 per month to $90 per month, raises the child care expenses allowance by $15 ($40 for children under age 2), alters the sequencing of the disregards, and requires that States disregard the earned income tax credit when computing AFDC benefits.

D. Transitional Assistance for Families Who Leave Welfare

- Requires that States provide transitional child care benefits for one year to families who leave welfare because of work, if the care is needed for employment. States must establish sliding-scale fee schedules based on ability to pay.
- Requires that States extend Medicaid coverage for one year to families who leave welfare because of work. States may impose an income-related premium for health coverage during the second 6-month period for families with incomes above the poverty level.

E. The AFDC-UP Program

- Requires that all States have a program which provides AFDC benefits to two-parent families (AFDC-UP). Requires States that currently have an AFDC-UP program to continue to operate it without a time limit on eligibility. Other States could choose to limit AFDC-UP benefits to as few as 6 months in any 12-month period.
- Requires that States provide full Medicaid coverage to families eligible for AFDC-UP, even in months when benefits are not paid because of the time limit.
- Requires that, effective 1994-1998, a parent in each AFDC-UP family participate at least 16 hours per week in a work activity. Establishes minimum JOBS participation rates for the AFDC-UP caseload in each States (40 percent for fiscal year 1994, growing to 75 percent for fiscal years 1997 and 1998).

F. Other Major Amendments (Not included here)

II. General Explanation of the Family Support Act of 1988

A. Child Support and Establishment of Paternity

1. Guidelines for Child Support Award Amounts

Judges and other officials are required to use State guidelines for child support unless they are rebutted by a written finding that applying the guidelines would be unjust or inappropriate in a particular case. States must review guidelines for awards every 4 years. Beginning 5 years after enactment, States generally must review and adjust individual case awards every 3 years for AFDC cases. The same applies to other IV-D cases, except review and adjustment must be at the request of a parent.

2. Establishment of Paternity

States are required to meet Federal standards for the establishment of paternity. The standard relates to the percentage obtained by dividing the number of children in the State who are born out of wedlock, are receiving cash benefits or IV-D child support services, and for whom paternity has been established by the number of children who are born out of wedlock and are receiving cash benefits or IV-D child support services. To meet Federal requirements, this percentage in a State must: (1) be at least 50 percent; (2) be at least equal to the average for all States; or (3) have increased by 3 percentage points from fiscal year 1988 to 1991 and by 3 percentage points each year thereafter.

States are mandated to require all parties in a contested paternity case to take a genetic test upon request of any party.

The Federal matching rate for laboratory testing to establish paternity is set at 90 percent.

3. Disregard of Child Support

The child support enforcement disregard authorized under the Deficit Reduction Act of 1984 is clarified so that it applies to a payment made by the noncustodial parent in the month it was due even though it was received in a subsequent month.

4. Requirement for Prompt State Response

The Secretary of Health and Human Services is required to set time limits within which States must accept and respond to requests for assistance in establishing and enforcing support orders as well as time limits within which child support payments collected by the State IV-D agency must be distributed to the families to whom they are owed.

5. Requirement for Automated Tracking and Monitoring System

Every State that does not have a Statewide automated tracking and monitoring system in effect must subject an advance planning document that meets Federal requirements by October 1, 1991. The Secretary must approve each document within 9 months after submission. By

October 1, 1995, every State must have an approved system in effect. Federal matching rates of 90 percent for this activity will expire after September 30, 1995.

6. Interstate Enforcement

A Commission on Interstate Child Support is established to hold one or more national conferences on interstate child support enforcement reform, and to report to Congress no later than October 1, 1990 on recommendations for improvements in the system and revisions in the Uniform Reciprocal Enforcement of Support Act.

7. Exclude Interstate Demonstration Grants in Computing Incentive Payments

Amounts spent by States for interstate demonstration projects are excluded from calculating the amount of the States' incentive payments.

8. Use of INTERNET System

The Secretaries of Labor and HHS are required to enter into an agreement to give the Federal Parent Locator Service prompt access to wage and unemployment compensation claims information useful in locating absent parents.

9. Wage Withholding

With respect to IV-D cases, each State must provide for immediate wage withholding in the case of orders that are issued or modified on or after the first day of the 25th month beginning after the date of enactment unless: (1) one of the parties demonstrates, and the court finds, that there is good cause not to require such withholding; or (2) there is a written agreement between both parties providing for an alternative arrangement. Present law requirements for mandatory wage withholding in cases where payments are in arrears apply to orders that are not subject to immediate wage withholding.

States are required to provide for immediate wage withholding for all support orders initially issued on or after January 1, 1994, regardless of whether a parent has applied for IV-D services.

10. Work and Training Demonstration Programs for Noncustodial Parents

The Secretary of HHS is required to grant waivers to up to 5 States to allow them to provide services to noncustodial parents under the JOBS program. No new power is granted to the States to require participation by noncustodial parents.

11. Data Collection and Reporting

The Secretary of HHS is required to collect and maintain State-by-State statistics on paternity determination, location of absent parent for the purpose of establishing a support obligation, enforcement of a child support obligation, and location of absent parent for the purpose of enforcing or modifying an established obligation.

12. Use of Social Security Number

Each State must, in the administration of any law involving the issuance of a birth certificate, require each parent to furnish his or her social security number (SSN), unless the State finds good cause for not requiring the parent to furnish it. The SSN shall not appear on the birth certificate, and the use of the SSN obtained through the birth record is restricted to child support enforcement purposes except under certain circumstances.

13. Notification of Support Collected

Each State is required to inform families receiving AFDC of the amount of support collected on their behalf on a monthly basis, rather than annually as provided under present laws. States may provide quarterly notification if the Secretary of HHS determines that monthly reporting imposes an unreasonable administrative burden. This provision is effective 4 years after the date of enactment.

Evaluation of Sole and Joint Custody Studies

John L. Bauserman,
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Introduction

Children in American non-traditional families unfortunately have been shortchanged when it comes to research that could lead to an improvement in the quality of their lives. The major reason for this is due to a lack of funding at an appropriate level and to a lack of vision as to the

importance of conducting detailed research by impartial investigations on a large national sample.

Virtually every problem area children from birth to adulthood fare appear to be exacerbated by being raised in a non-traditional family. The reasons why this should be so have only been ascertained in part.

If there have been any studies conducted on a national level and on an appropriately selected sample it is a well kept secret.

Because of the lack of national data researchers all too frequently confuse themselves as well as the public. Some researchers claim that living in a single parent family, never married parent family, stepfamily, or foster family has no harmful effects on children and others that it does. Who is right?

Both are right! Both are right because all American studies to data have been done on small samples selected in different ways, at different points in the lives of the children, in different states, on different racial, religious, and ethnic mixes of children, and using different measures and techniques.

It is important for child advocates to understand these problems with the research on the one hand and how to apply the research despite these deficiencies on the other.

The British Approach

The British conduct a study on a representative national sample every 10 years. Every child born in a two-week period during the beginning year of the study are followed from birth to adulthood.

This approach ensures a comprehensive national sample that includes all ethnic, racial, and socio-economic groups in the same proportions that are in the general population. In addition because of the prospective nature of the study it is possible to compare children and parents over long periods pre- and post-divorce or separation and thus ascertain the effects of divorce more accurately on the family.

The British studies which have focused on the children in non-traditional families in these samples show that such children are disadvantaged and are not as well adjusted as their intact family counterparts.

The American Approach

The American approach has been to find hundreds of small studies in diverse locations but usually in the larger metropolitan areas and very frequently on populations that are unrepresentative of the U.S. population as a whole.

This does not mean that these studies are without value. Each study makes a contribution but at the same time must be considered with numerous other studies in order to get a complete and accurate picture. Advocates and mental health professionals with a comprehensive knowledge of the research are in a much better position to evaluate new research than those who don't.

Taken as a group, the American research shows that living in a single parent family has a deleterious effect on children but, of course, there are exceptions.

In addition, mother sole custody and father sole custody are equally good for raising children. Joint custody does contribute to a child's good adjustment and welfare and has more advantages for parents.

An Overview of Access (Visitation) Research

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In domestic law, "visitation" refers to any period of time spent between the child and their noncustodial parent. "Visitation" rights are also specified for some joint custodial parents. In effect, while a custodial parent retains substantial legal and determining rights over the child, during visitation the child is in the care of the noncustodian, and absent compelling show of cause, the noncustodian's parenting is unrestricted by the other parent. For all practical purposes, when visitation is defined, what is being defined is the structure within which parenting by the noncustodial parent will take place: at frequent or infrequent intervals, with our without social or geographic restrictions,

in short or long blocks of time, including or excluding certain distinguishable periods of the child's daily or yearly routine: nights, mornings, afternoons, weekends, school days, holidays.

Legal Background

"Visitation" rights are essential legal rights of both the child and the parents involved in a divorce. The right of the noncustodial parent and their child or children to have access to each other after divorce is a fundamental, joint right of the parent and child with a basis in constitutional case law, which has held that the rights to raise, have access to, and care for one's own children are "more precious than property rights," are "essential;" and that the right to be with one's children is a "natural" right with a higher moral claim than any economic right. In the past, the right of visitation has virtually always been raised on behalf of the parent; however the child's right to visitation is also protected by constitutional law.[1]

Social Science Background

The legal presumption in favor of parent-child visitation after divorce is bolstered by substantial evidence from social science research which indicates that postdivorce adjustment of children is linked strongly to the quality of their relationships with both of their parents. Studies show that the quality of a child's relationship with the noncustodial parent is associated with the continuity, regularity, "normalcy," and extensiveness of the contact they enjoy with that parent. Some of the most influential research first demonstrating these findings was done by Wallerstein and Kelly, published in their book *Surviving the Breakup* (1980). This and other research has repeatedly pointed to the "surprising" degree to which children of divorce desired to spend more time with their noncustodial parents; it has also shown that children's on-going positive social and psychological adjustment after divorce is linked almost incrementally to the frequency,[2] or alternatively, the duration[3] of the time spent with the parent. Other research findings ahve pointed to qualities such as "normalcy" or "dailiness" of the visitation for the child.[4] Whether achieved through frequent, regular, intermittent contact throughout the year, or through relatively long (weeks or months) stretches of uninterrupted daily life together, visitation which is structured so as to allow "normal" parenting activities to take place is most successful. To put it another way: visitation which is structured so as to reduce one parent to the status of a "visitor" (or "sugar daddy," "Disneyland Dad," etc.) does not achieve as positive an outcome for children as visitation which is structured so as to reproduce the qualities of normal parent-child contact in the intact family.

Other Findings and Topics in Social Science Research

While there is a reasonable level of consensus in the social science literature on the fundamental importance to children of post-divorce visitation, some policy makers and advocates continue to appear reluctant to accept the conclusion that what is in children's best interest is to normalize parent-child relations after divorce by maximizing regular, frequent, and long-term access between children and their non-custodial parents. But the main arguments against such visitation center on the question of how such visitation affects the custodial parent—and only indirectly the child—not on how it directly affects the child.

One argument made is that the relationship between the child and their custodian is of primary importance and that no access arrangement between the child and the non-custodian should be allowed which threatens or impinges on the full independence of the child-custodian bond. Not surprisingly, research that has examined the child-custodian relationship has been found it to have profound significance to the child. This kind of argument was made in the influential, but now widely discredited book by Goldstein, Freud, and Solnit, *Beyond the Best Interests of the Children* (1979).

But more recent studies show not only interdependence between children and their single-parent mothers but also divergence in their needs. Tracy Barr Grossman, in her book *Mothers and Children Facing Divorce* (1986), found that custodial mothers tend to underestimate the extent and warmth of feelings their children have for their noncustodial fathers.

Also, those who draw attention to the economic and social strains often present for custodial (single) mothers frequently conclude that the strains of divorce for children stem (it is implied, primarily) from the loss of economic status and security (rather than, it is implied, from the loss of the companionship and care of one parent). Yet, in a new study (Lives of Quiet Desperation, Teresa Jayne Arendell), and one that is highly sympathetic toward single mothers, it was found that the few women who did not experience role overload were those whose ex-husbands had continuing signifi-

cant and regular parenting roles either as joint custodians or visiting noncustodians. These findings indicate that especially in divorced households whose joint (though separate) incomes are not adequate to relieve one parent of role strain by affording ample paid child care, housekeeping, and other services, shared parenting achieved through extensive visitation (quite apart from shared responsibility for the financial welfare of the child) goes a long way toward relieving the stresses now felt by sole custodial parents.

Not only can liberal visitation relieve one parent of the considerable stresses of single parenting, indirectly benefiting the child by relieving the custodian; and not only do studies, described above, show that children benefit directly from maintaining the active, normal pattern of parenting by both their parents; but there is added evidence that suggests that each parent has a unique role and contribution to make, since male and female parents tend to interpret aspects of their parenting roles differently (see Michael Lamb's recent work), and since normal sex-role development is related to the quality of the relationship a child has with each sexed parent. Such findings do not reflect on the personal adequacy of either parent, but rather on the fundamental mental and biological tie that binds children to both their parents for life. This tie is one that transcends many apparent barriers; where these relationships have been hampered in early life, there is a significant need for renewing, rebuilding, and "working out" these fundamental relationships in later life. Children whose ties with their biological parents have been severed or greatly restricted may take years to rediscover and rebuild those ties once they reach the age of adulthood, when those relationships are not restricted by legal orders.[6]

Another question raised about the benefit to children of liberal noncustodial access is the effect on the child of persistent conflict or hostility between the two parents. Evidence of the adverse effect of interparental conflict on children (in both intact and divorced families) leads some to conclude that noncustodial access should be liberal only where there is minimal conflict of this kind between the custodian and noncustodian.[7] But research points in the opposite direction (Hess and Camara, 1979), indicating that the many benefits of continued, frequent contact between the child and each parent outweigh the stress that may be caused by such conflict. Such findings lead to the conclusion that visitation should be structured so as to minimize the occasion for interparental conflict (e.g., through neutral drop-off points and specific, enforceable visitation orders); it also points to the importance of removing the issues of child visitation from the adversarial realm where such conflict (and blaming) may appear to be rewarded, if possible through mediation of parental conflict.

What's Really Going On

With so many families affected by divorce and by questions of access between children and their parents, it is unfortunate how little is clearly documented and known about the actual patterns and practices of visitation in divorced families. Little is known about either the content of judicial orders regarding visitation, or about how the real-life practice of visitation compares to these orders. Research is needed to help answer such questions as who much time noncustodial parents spend with their children; what activities and what aspects of the parental role noncustodial parents engage in with their children; what the nature and extent is of conflicts and disputes (both formal and informal) between parents arising from visitation; how such disputes are resolved, and what the most successful approaches are to resolving them; what the extent of denial or frustration of visitation by the custodial parent is; what measures are taken, and what are successful, in enforcing visitation rights; what the costs, both financial and emotional, of visitation are for the noncustodial parents, and to what extent do these discourage the exercise of visitation rights; what feelings and beliefs are held by the children and the parents about visitation in general and in their own cases; what formal or informal "standards" are used by judges and other legal, social welfare and mental health professionals in establishing or recommending visitation rights in particular cases, and what evidence or beliefs underly these standards or practices.

Research has touched on several, but not all of these subjects. However, a number of studies, focused on the emotional impact of divorce and custodial disposition on fathers, have described the impact different postdivorce structures have on them, with greater access to their children being key to emotional well-being of the fathers and to better father-child relations (see Lublin, 1983, and Lowery and Settle, 1985).[8]

Other research has indicated that perhaps a surprisingly large percentage of custodial mothers deliberately withhold access to the children from the father for reasons that do not have to do with the children's wishes, safety, or health; Fulton (1979) reported the number may be as high as 40%

(according to the mothers' reports) or 53% (according to the fathers' reports).[9]

Studies also show that, despite highly publicized claims to the contrary (see esp. Phyllis Chesler, *Mothers on Trial*); the vast majority of child custody awards are still to mothers, and the vast majority of visitation awards are of "reasonable", usually bimonthly, visitation (every other weekend). Other surveys have attempted to ascertain the actual practice (frequency, duration, regularity) of visitation in postdivorce families, and these indicate that in the majority of cases (reflecting the access usually awarded), actual visitation is, in fact, limited, with many parents not seeing their children even as often as once a month. The impact of geographic mobility on visitation has not been studied, although it is known that many divorces (and remarriages) involve subsequent moves of one or both parents, which may make frequent access impossible; at the same time, alternate arrangements for long-term summer or holiday visitation may not be made, or permitted, as an alternative. Studies do show that frequency of visitation appears to be negatively correlated with remarriage by either parent and with passage of time (or alternatively, with the age of the child or children, which may reflect growing adolescent independence rather than growing parental indifference).[10]

There is a growing literature on the potential of mediation as an alternative to litigated resolutions of visitation disputes.[11] Some opposition has been voiced regarding mediation's real effectiveness or hidden dangers for less "powerful" parents, but studies show greater harmony and satisfaction for both parents tends to result even from non-voluntary, court-orderd mediation. There are also concerns about the arbitrary nature of judicial decisions on these matters which might favor mediated resolutions of visitation arrangements. Judges themselves feel that custody and visitation decisions are among the most difficult to make, particularly in an adversarial context, presented with conflicting, inexpert or unreliable, and emotional evidence. The dissatisfaction of clients as well as of the judiciary indicates that extra-judicial resolutions will play an increasing role in resolving such disputes.

The judicial dilemma may also promote the search for visitation "standards". Such a search would encourage policy-makers to review, initiate, or sponsor research to support the development of such standards. One attempt to synthesize the results of social research and develop from this basis recommendation of standards for parental access to children after divorce can be found in Cochran (1985), who favors joint physical custody, based on children's needs; and presumptive sole legal custody in the "primary caretaker", in order to reduce custody litigation.[12]

In another recent article (*Family Law Quarterly*, Fall 1986), Ken Magid and Parker Oborn have attempted to develop "standards" for visitation frequency (but not duration) based on different age groups and geographic distance between the parents. This attempt in turn raises questions about whether standards for visitation *can* be developed in terms of absolute quantities of time, or whether (however liberal), implementing such standards would fail to meet the challenge raised by Lowery and Settle (1985), that what is really needed is a standards of flexibility (not of tradition or past practice) in establishing visitation to meet the very unique needs of different families.

There is another aspect of visitation which is important but which has received only a little attention: the role that opinions, attitudes, and beliefs play in determining those social expections, legal standards, and social policies which affect the restructuring of parent-child relations after divorce. A 1985 Virginia slims poll of 3000 women and 1000 men over the age of 18 found that 28% of the women and 25% of men asked believed that divorcing parents should share joint custody of their children. Only 17% of the women and 13% of the men asked expressed the opinion that the mother should automatically be awarded custody. If these result are valid, they indicate that society at large is more receptive than might have been expected to the more equal sharing of parenting responsibilities after divorce.[13] A survey published May 13, 1985 in *Marriage and Divorce Today* (v. 10 n. 41) of *MDT* readers showed that 77% supported a legal presumption in favor of joint physical and legal custody; 74% supported joint legal and physical custody even for antagonistic parents, provided they were given counseling. A doctor dissertation by Janine Schaub (*Joint custody after divorce: views and attitudes of mental health professionals and writers*, Rutgers University, 1986; UMI Order No. 86-14559) showed that "writers with data-based opinions seemed to view joint custody more favorably than writers with non-data-based opinions . . . Results indicated overall favorable attitudes toward joint custody among all three professional groups. Female professionals appeared to view joint custody more positively than male professionals. Social workers stressed the importance of regular contact between the child and both parents more than psychiatrists." (author's abstract) Findings such as these indicate that the

most negative opinions about the consequences of sharing parenting after divorce are held least among professionals who work with real families going through the divorce process. Her findings also point out that being acquainted with the available research about parenting after divorce tends to more favorably dispose even experienced people to sharing parenting after divorce.

While these surveys of opinion are all about sharing custody, not on structuring visitation, it seems reasonable to expect that a favorable attitude toward sharing custody would correlate with a favorable attitude toward regular sharing of parenting through thoughtfully structured postdivorce visitation as well.

Finally, it is important that future research explicitly address the political and personal beliefs underlying social research and social policy literature about visitation and parenting after divorce. In current domestic policy debates, mothers and children are often treated as an emotional and economic unit, with identical interests, which they may not in fact share; while the mutual interests of fathers and children tend to go without mention. Further, mothers and children are very often portrayed as victims—not only of divorce, but also of their ex-husbands and "absent" fathers. Such a portrayal is simplistic and misleading—it is unfair to many fathers, it distorts the realities of many domestic conflicts, including divorce; it tends to neglect some of the most urgent needs of children of divorce; and it undermines our recognition of women as independent and responsible beings. Such portrayals are bolstered by the tendency to lump the social and economic dislocations of divorce with the problems of unmarried teen mothers; of parenting in an economically oppressed underclass; the problems of economic discrimination against women in the marketplace; and the absence of a positive national family policy that supports parental leave, child care, and other measures which are needed by all families where parents must work to support their families. Families who have experienced divorce do so as individual human beings, not as statistics, and they deserve to be treated according to their needs as members of a family, not according to cliches that imply dependence and irresponsibility.

The advent of "no-fault" divorce, whatever its economic consequences have been, was a step toward "demilitarizing" divorce, and toward redefining divorce as a process of restructuring the divorcing family without creating victims and victimizers, winners and losers. Those who would continue to see divorce in the older light will bring little comfort or aid to those they seek to help. Particularly, they bring little help to the children of divorce, for whom such designations distort the strength and meaning of their enduring love and life-long connection to each of their parents. Those who put the interests of children above all else are obligated to defend the hearts of children as well as their physical health, and this means putting the opportunity in each of their hands to know the full richness of both their parents' love.

Notes

1 For a review of the constitutional basis for the right of parent-child visitation after divorce see Novinson, "Post-divorce visitation: Untying the triangular knot," *University of Illinois Law Review*, 1983, pp. 121-200.

2 See, Wallerstein and Kelly, "The effects of parental divorce: experiences of the child in early latency," *American Journal of Orthopsychiatry*, v. 20 (1976); also see Lublin, *The relationship between the physical accessibility and responsiveness of attachment figures with child adjustment after divorce*, Doctoral dissertation, New York University, 1983, and reviews of social science findings on this topic in Novinson (op. cit.) and Cochran, "The search for guidance in determining the best interests of the child at divorce," *University of Richmond Law Review*, v. 20, n. 1, Fall 1985, pp. 1-65.

3 See Palen, *An analysis of the father-son relationship in post-divorce mother-custody families*, Doctoral dissertation, University of Chicago, 1985; and Hess and Camara, "Post-divorce family relationships as mediating factors in the consequences of divorce for children, *Journal of Social Issues*, v. 35 no. 4, 1979, pp. 79-96.

4 See Walker, *Satisfaction of adolescents experiencing various patterns of visitation with their divorced fathers*, Doctoral dissertation, The Wright Institute, 1985; also Cochran, op. cit. at pp. 44-58.

5 See her doctoral dissertation, *Lives of quiet desperation: Divorced women with children*, University of California, Berkeley, 1984.

6 See, on a related subject, Nathan, "Visitation after adoption," in New York University Law Review, v. 59, June 1984, pp. 633-675, arguing the merits of visitation rights of biological parents with their children even after adoption.

7 See, Hess and Camara, op. cit., pp. 91-92 for an explicit rebuttal of this idea: "Apparently, it is the quality of relationship between the child and parents that is most crucial in divorced families."

8 See for example Lublin, op. cit., who found that fathers who saw their children more were also more loving with them.

See also Lowery and Settle, "Effects of divorce on children," *Family Relations*, October 1985, pp. 455-463. See also Jerry McCant, "The contradictions of fathers as nonparents," *Family Law Quarterly* v. 21 n. 1 (Spring 1987), at pp. 133-134.

9 See also Grossman, op cit. and Novinson, op. cit. at p. 172.

10 See the review of data on "visitation performance" in Greer Litton Fox's chapter, "Noncustodial fathers," in *Dimensions of Fatherhood* (ed. Shirley Hanson and Frederick Bozett, 1985); also, Suzanne Bianchi and Judith Seltzer, "Life without father," *American Demographics*, December 1986, pp. 43-47.

11 See for example the doctoral dissertation by Angela Stewart (American University, 1982), *Short-term effects of divorce mediation*, which found the use of mediation in a group of families resulted in significantly more satisfied parents, more amicable and less costly settlements, and more joint custody than in a control group whose settlements were not mediated.

12 Cochran, op. cit. Yet recent research on fathers and fathering (see for example works by Michael Lamb, or see Parke and Searle, "Fathering, it's a major role," in *Psychology Today*, v. 108, Nov. 1977) does not conclude that fathers or fathering are in any way less significant forms of parenting than mothers or mothering. Also see Peter Neubauer, "Reciprocal effects of fathering on parent and child," in *Men Growing Up* (1986); Nathalie Martin, "Fathers and families: Expanding the familial rights of men," *Syracuse Law Review* v. 356 (1986), pp. 1265-1302; Michael S. Kimmel, "Real man redux," *Psychology Today*, July 1987, pp. 48-52. The concept of "primary caretaker" is one that may be more a measure of parental identification with the child, than of the mother or father's parenting ability or commitment.

13 See, "The 1985 Virginia Slims American women's opinion poll," p. 54.

Visitation Mediation Service

Office of Child Support Enforcement
Prince George's County, Maryland

Hilda Pemberton
Member, Prince George's County Council
Carolyn Billingsley, L.C.S.W., A.C.S.W.
Executive Director, County Commission for Children and Youth

A Visitation Mediation Service has been established in Prince George's County, Maryland to assist divorced parents in developing and maintaining child visitation arrangements. Only clients of the Office of Child Support Enforcement are eligible for this service. The program is being operated by the Institute for Child Studies at the University of Maryland. This unique service is mainly delivered through telephone mediation between parents and professional mediators. The program components are:

- Assisting parents in developing schedules of visitation with their minor children.
- Providing an initial parent education session to acquaint parents with the special needs of children. The importance of children having reasonable access to both parents will be emphasized. Parents will be familiarized with the special needs of minor children whose parents are not living together. A spirit of cooperation between parents will be encouraged where the needs of minor children are concerned.
- Providing parent educational materials.
- Establishing a telephone mediation service that shall aid parents in reaching schedules for parent-child contact.
- Creating a face to face mediation service available to parents for a maximum of three hours at a fee if telephone visitation service is not successful.
- Documenting an agreement of visitation arrangements made by the parents as a result of visitation mediation services.
- Assessing the efficacy and impact of the visitation mediation program.

Banana Splits: A School-Based Program For The Survivors of The Divorce Wars

Elizabeth M. McGonagle, M.S.W., *School Social Worker, Ballston Spa, N.Y.*

Many children are impacted by the dissolution of their family. Symptoms appear through lowered grades, somatic complaints, or manipulative actions. This presentation will discuss a school based peer support program, *Banana Splits*, which is open to any child whose family has changed through separation, parental death, or divorce. The program is designed to help students begin to confront the many issues surrounding family change. There are several basic components of the program which will be addressed.

The program is not designed to be therapy, but it IS therapeutic! Just as we, as adults, often feel better sharing experiences with our peers, kids do too. The program meets throughout the school year, allowing the child to discuss issues relevant in their life.

Although parental permission is needed after the first time the elementary age child attends, it is the child who decides if they want to attend any given meeting. The content of the meetings are confidential, but the tenor of the group is very public. The students view themselves as survivors, who are learning to problem solve some very difficult issues. The bi-weekly meetings are held for 30-45 minutes, often during the lunch hour.

Many children going through the divorce process feel that they are all alone. To counteract this feeling, when the child decides that they are ready to join, and parental permission is obtained, the child makes a paper banana to hang on the Banana Tree. This very simple task, not only states that the child is willing to publicly admit that their parents have split, but others, in turn, are helped. The newest child sees the tree and often recognizes the names of school leaders. (Staff members, who have survived family change, often will put their names of the tree). The child in essence is saying, "I am not alone; I am willing to be helped and am willing to help others."

The end of the year is marked by a public celebration of survival. This is a picnic, at which pizza, drink and banana splits are served. Each child is given a Top Banana Button, on which is noted several special divorce related events, which they have survived.

The groups are open for membership at all times, and the child may remain as long as they want. A group may be composed of children going through any stage of the split/divorce journey. Peer support through mentoring and modeling is achieved. A child who has been to court can assuage the fear of the child who is yet to go.

The very public image of the group helps staff to realize that: 1) divorce involves a large number of their students, and 2) they realize that divorce is not a single occurrence, but can jolt a child anytime. During custody battles, or court hassles, motivation falters or ceases, in spite of effort by the teacher.

There is a Parents Group which meets as often as needed and forms its own peer support, sharing concerns about child-rearing, single/step parent problems, etc.

The program is now in its eleventh year, and 15,000-20,000 children have participated in schools throughout U.S.A., Canada and England.

Parental divorce is the most common childhood trauma.
If the current divorce rate continues, 50% of all kids born in the 1970's will be survivors of a family breakup.
The school based Banana Splits Program helps the child redirect the energy being utilized for emotional survival back to the priority of education.
Simultaneously the staff and family are involved in the appropriate aspects of the program.
FOR THE STAFF
FOR THE PARENT
FOR THE CHILD
The unwilling recipient of this crisis is the school system.
Through decreased energy for learning, motivation diminishes, performance declines, and test scores fall. Teachers become frustrated.
The shock waves are felt by:
The Child
The School
The Family
Now in its tenth year, Banana Splits, developed in conjunction with the Ballston Spa School System, has a proven success record.
A workshop has been designed for presentation to school personnel.
Material is available for in-service training, as well as for the formation of a
BANANA SPLITS
Program.
BANANA SPLITS

Redefining the Family: What Is It That Makes A Family A Family?

Lita Linzer Schwartz, Ph.D., *Professor of Educational Psychology*
Pennsylvania State University, Ogontz Campus

"Once upon a time" it was very simple to define the family. There was what professionals call the "nuclear" family: father, mother, and children. There was also the "extended" family that included grandparents, aunts, uncles, and cousins. Out of courtesy, and if there were no hostile feelings, certain in-laws might also be considered part of one's family.

Life is not as simple today. In the year ending February 1989, there were 2,396,000 marriages and 1,188,000 divorces. Some of the marriages were re-marriages, and some of the divorces were the second or third for the people involved. For the children of these re-marriages and re-divorces, familial relationships have become increasingly complex.

Partly as a result of divorce and remarriage, and partly due to other practices, we now have single-parent families, remarried (formerly called step-) families, foster families, and adopted families, each with a legal underpinning. There are also those who wish to be perceived as families, but who lack the legal standing to be so regarded. And there are those who are regarded as part of a family because of friendship ties that may be deeper than those of blood relatives. Thus there are a number of bases for defining a group of people as a family. There are also obstacles to such a definition in the emotional, if not the legal, sense.

These are the premises on which the workshop are based. They are necessary considerations in trying to answer the question: "What is it that makes a family a family?" That question is especially pertinent as we deal with the high divorce rate of recent years and the effects of divorce on children.

In attempting to redefine the concept "family," it is essential to recognize the emotional factors that play a role in individual perceptions of who is in one's family and who is not. Part of the workshop focuses on this critical item, which is especially important where child custody is concerned.

Familiarity with ideas conveyed in one or more of the following sources would be helpful for active participation in the workshop:

Carter, B., & McGoldrick, M. (Eds.) (1988). *The changing life cycle.* New York: Gardner Press.

Dornbusch, S. M., & Strober, M. H. (Eds.) (1988). *Feminism, children, and the new families.* New York: Guilford Press.

Kaslow, F. W., & Schwartz, L. L. (1987). *The dynamics of divorce.* New York: Brunner/Mazel.

Moorman, J. E., & Hernandez, D. J. (1989). Married-couple families with step, adopted, and biological children. *Demography, 26*(2), 267-277.

Palkovits, R., & Sussman, M. B. (Eds.) (1988). Transitions to parenthood. *Marriage & Family Review, 12*(3/4).

Pasley, K., & Ihinger-Tallman, M. (Eds.) (1987). *Remarriage & stepparenting: Current research and theory.* New York: Guilford Press.

Schroder, P. (1989) *Champion of the great American family: A personal and political book.* New York: Random House.

Open Adoption: A New Way of Blending Families

Jon R. Ryan, NOBAR President
(National Organization for Birth Fathers and Adoption Reform, Baltimore, MD)

The majority of media coverage of adoption today will focus on one issue: how long it takes a childless couple to get a baby. Readers will be informed about the usual reasons for such a baby "shortage": women are choosing abortion rather than adoption; there are from 40 to 100 couples wanting a baby for every healthy, white newborn infant that is available; "unwed motherhood" is

now socially acceptable and more mothers are keeping their children; giving fathers rights burdens mothers who want to place their babies for adoption; giving fathers rights jeopardizes the prospective adoptive parents from finalizing the adoption.

Mention adoption, and rarely will anyone discuss the rights of the child.

In the United States, closed adoption has been practiced since early in this century. Closed adoption has been described as "cold-blooded adoption" because it imposes such harsh rules on the people involved. Birthparents (mothers and fathers who are surrendering a child) must given their baby to strangers, must never know anything about their son or daughter, and must be protected by the secrecy. The adoptive parents must accept whatever is told them about the baby, and must be protected by the secrecy. The adopted child becomes a victim in this process: he or she is forever denied rights that the rest of our population take for granted—having an original birth certificate and sharing the sacred bonds of blood with parents, siblings, and other relatives.

OPEN ADOPTION is a process in which the birthparents and prospective adoptive parents meet and exchange identifying information. With identities known, all parties then negotiate the relationship they will have before and after the adoption. This relationship, as are all relationships in life, is constantly renegotiated and reevaluated at different stages of their lives to consider what is best for the child and all of the parents involved.

OPEN ADOPTION is conceptualized by a statement in a new book "Adoption Without Fear": "We are doing adoptions WITH people, not TO them."

OPEN ADOPTION focuses upon the lifelong needs of the adopted person—the right of an adoptee to have knowledge about and have access to his or her birthfamilies.

OPEN ADOPTION eliminates anonymity and secrecy for the adoptee. Most people accept their geneology as a matter of fact. Traditional adoption denies them this fundamental right.

OPEN ADOPTION blends families through adoption much like a marriage. When two people marry, it is not expected that the new husband or wife will renounce their family for their new spouse's family. Yet in traditional closed adoption, an adoptee is expected to forsake both their paternal and maternal birthfamilies for the new adoptive family.

OPEN ADOPTION affirms that children's rights are everyone's rights.

Litigating for Joint Legal Custody

Jerry Solomon, Esq., New Carrollton, MD.

Much has been said and written about Joint Legal Custody during the past ten years. At one point, judges, psychologists, lawyers and parents felt that Joint Legal Custody was the answer to the custody problem. They missed the point. The answer to the custody problem is fairness in decision making and counselling parents on the effects of divorce. Once the courts, psychologists, attorneys and parents achieve this basic concept in American jurisprudence then the notion of Joint Legal Custody will follow naturally from most custody decisions. In the interim, you still fight for the right to stay a parent in your child's life.

This workshop is designed to help attorneys and litigants achieve the goal of Joint Legal Custody. It will include, but are not limited to:

- A hard look at whether you really want Joint Legal Custody in the interests of your children, as opposed to your interests;
- Whether your past conduct as a parent will legally qualify you as a Joint Legal Custodian;
- How to conduct your affairs after a separation in order to better your chances for Joint Legal Custody;
- A differentiation between Joint Legal Custody and Joint Physical Custody, and why these two basic concepts should not be mixed;
- Methods of dealing with a judge who has preconceived notions about Joint Legal Custody;
- Litigation strategy in achieving Joint Legal Custody; and
- Suggested wording for a Joint Legal Custody decree.

The workshop will be part lecture and part question and answer.

Conflict Resolution: Positive Tools For Effective Results

Michael L. Oddenino

With Special Thanks To Thomas Crum and Judy Warner

I. The Nature of Conflict

Defining conflict so as to enable us to increase our understanding and skills in dealing with it.

The importance of choosing our own response to any given situation, particularly situations not to our immediate liking.

Conflict is natural. It is a motivator for change and can create beautiful results.

Conflict is neither negative nor positive, it is simply an opportunity for growth.

Conflict is too often viewed as a contest.

Resolution of conflict is not about who is right and who is wrong, it is about acknowledging and appreciating differences.

Viewing conflict as a dance of energy. Unshackling ourselves from outmoded belief systems enhances our perceptions and frees from the burden of judgments.

II. The Importance of Being Centered

What is being centered?

The effect of being centered on our relationships.

The value of being centered in stressful situations, or how to minimize stress in your daily relationships.

How to tap the power within you.

III. Recognizing Connectedness

The reality of connectedness vs. the illusion of separateness.

KI — The thread of energy which connects all things.

Viewing relationships as the contraction and expansion of energy. Expanding KI and strengthening relationship vs. contracting KI and creating the illusion of separateness.

Letting go of fear, tension and self-imposed limitations thereby giving rise to unprecedented strength and power.

IV. Discovery and Understanding — The Magic Tools

Experiencing the value of discovery and understanding.

Integrating the skills of listening and awareness in all aspects of conflict.

Appreciating the value of our differences as well as our similarities.

Discovery — Looks beyond the immediate conflict to the horizon of possibilities.

Discovery — Enables us to let go the filters of our past and the blinders of our expectations.

Discovery — Values inquiry and creativity.

Discovery — Turns frustration into fascination and work into play.

Understanding — The gift that comes from active listening.

Understanding — Is asking questions rather than having the answer.

Understanding — Focuses on similarities.

Understanding — Acknowledges and appreciates differences.

Understanding — Moves us from positions to vision.

V. Practical Applications of the Principles

Step 1 — Commitment to resolve the conflict.

Step 2 — Define the issue.

Step 3 — Define the interests.

Step 4 — Examine beliefs.

Step 5 — State feelings.

Step 6 — State visions.

Step 7 — Co-create common vision.

Step 8 — Develop solutions.

Step 9 — Declare commitments to solutions.

Step 10 — Envision the future.

Creating a willingness to change.

Creating viable solutions that support all interests in a conflict.

Understanding and implementing a strategy to resolve conflicts.

Change is the one constant in the universe.

Change is movement, flexibility in movement allows us to stretch rather than shrink in life.

Joyously embracing change is consciously choosing our future.

The energy of conflict can produce precious gifts which could never have been experienced in any other way.

Co-creation eliminates separateness.

VI. Exercises.

A Proposal for Lawyers and Mental Health Professionals for Resolving Sex-Abuse and Child Custody Disputes Without the Utilization of Adversarial Proceedings

Richard A. Gardner, M.D.

The historical roots of the adversary system are reviewed with particular focus on three medieval methods of adjudication: trial by ordeal, trial by battle, and trial by wager. The important impact of the Magna Carta and the Pope's Fourth Lateran Council (both in the year 1215) on the development of the inquisitorial and adversary systems is discussed. Focus in then shifted to the 18th and 19th centuries, during which time the adversarial system developed into its present form.

Deficiencies in the adversary system as a method for ascertaining "the truth" are discussed. Particular focus is given to lies (both of omission and commission), the right of the accused to be confronted by the accuser in an open courtroom, the attorney's conviction for the client's cause, and the notion that emotions interfere with a professional's objectivity.

Dr. Gardner's proposal for resolving child custody disputes without the utilization of adversarial proceedings is then discussed in detail. each of the three phases (Mediation, Arbitration Panel, and Appeals Panel) is described, with particular consideration to the roles of both attorneys and mental health professionals. Throughout, emphasis is given to the proposal's purpose of preventing entirely the participants' involvement in adversarial proceedings, yet still operating within our present legal structure. Last, Dr. Gardner details how none of his proposals deprive parents of their rights to due process under the Constitution of the United States.

A Three-Phase Proposal for Resolving Child Custody Disputes Without the Utilization of Adversarial Proceedings

Richard A. Gardner, M.D.

Mediation

I am not simply confining myself to doing mediation (and custody evaluations within that context). I am also devoting myself to promulgating (through lectures and writing) a three-stage system for the resolution of custody disputes. This method, although utilizing attorneys, would remove custody disputes *entirely* from adversarial proceedings. In the first stage, *mediation* would be required as the first step toward resolution of a child custody dispute. This is very much the situation in the state of California where the Conciliation Courts routinely attempt to mediate all custody disputes at the outset (H. McIsaac, 1984). In recent years many other states, as well, have introduced mandatory mediation before parents are permitted to embark upon adversarial litigation.

In the system I propose, parents could choose to mediate their dispute within or outside the court system. They could avail themselves of the services of psychiatrists, psychologists, social workers, lawyers, mediators, arbitrators, pastoral counselors, clergymen, and others qualified to conduct such evaluations—either privately or in clinics. Obviously, training programs and standards would have to be set up in order to ensure that only qualified mediators could be utilized at this stage. Crucial to the success of such mediation would be the reassurance that the content of the deliberations would, under no circumstances, be made available to outside individuals—such as lawyers, judges, etc. No written reports would be formulated and no verbal conversations between the mediator and lawyers would be permit-

ted. And these provisos might be stipulated in a contract such as the aforementioned (Appendix II) which I utilize. Parents involved in a custody dispute would also be free to avail themselves of such services provided under the aegis of the court or court-designated mental health clinics. These would provide mediation services at a fee commensurate with the parents' financial situation. Again, there would be absolutely no transmission of the mediator's findings and recommendations to others—even to the legal system under whose authority the mediation might have operated. My hope is that such mediation would serve to resolve the vast majority of custody disputes.

The mediated parenting plan would be verbally communicated to the attorney preparing the separation agreement. Because divorce is still a legal matter (and probably will be for the foreseeable future), the services of an attorney would still be necessary. However, my hope is that other possible disputes related to the divorce would also be resolved by mediation. Whether or not the parents are successful in accomplishing this, the custody dispute (the focus of my three-step proposal) could not be dealt with—at any of the three levels—by proceedings within the adversary system.

Arbitration Panel

But mediation, like everything else in the world, is not without its drawbacks. All of us are fallible, all of us make mistakes, and the most skilled mediator is no exception. Mediation may break down for a variety of reasons, one of the most common of which is the refusal by one or both parties to provide full disclosure of finances. Or, each spouse may be so convinced of the other's ineptitude as a parent that the compromises necessitated by mediation may not be possible. Psychiatric problems may interfere with a parent's ability to make the necessary compromises. When mediation breaks down, most people today have no choice but to involve themselves in custody litigation. In the system I propose, the parents would then be required to submit their dispute to an *arbitration panel*, working within the court structure. I believe that the best panel to deal with such a dispute would be one consisting of two mental health professionals and one attorney. The panel members would be selected by the parents from a roster of properly qualified individuals provided by the court. (The training and experience requirements for such certification have yet to be determined.)

The mental health professionals on the panel would be expected to conduct the kind of custody evaluation described in this book. The lawyer would be involved in the legal aspects of the dispute and would draw up the power to subpoena medical records, request financial documents, etc. This power would be especially important when there is reluctance or refusal by one or both parties to disclose pertinent information. Most important, the parents would meet directly with the panel members. Although the discussion would be free and open, the panel would still have the authority to prevent the proceedings from degenerating into a free-for-all. By having three panelists there would be no chance of a tie vote. The majority decision will prevail. Obviously, a panel of three is less likely to be biased than an individual mediator or judge. Equally (if not more) important is the panel's data-collection process. Whereas the judge is confined to the constraints of the adversary method of data collection (gathering of evidence) the panel would be free to avail itself of the more flexible and far preferable procedures used by mental health professionals serving as impartial examiners.

The panel would be free to bring in any parties who might be helpful, and such parties could include attorneys to provide independent representation. However, such attorneys would (like all other participants) be required to involve themselves in free and open discussion. They would not be permitted to impose upon the proceedings courtroom procedures of inquiry, which constrain open discussion and could serve to hide information from the panel. For example, such an attorney might ask someone a question that could be answered by "yes" or "no." However, the respondent would be completely free to add the word "but" and then provide whatever qualifications and additions warranted to provide clarification. This would be a crucial difference between the panel's method of inquiry and that of the courtroom. Such independent representation might be especially useful, for example, for a passive wife who might not be able to hold her own against an overbearing husband. The panel, as well, would serve to protect such a person from being squelched and possibly exploited.

The mediated parenting plan would be verbally communicated to the attorney preparing the separation agreement. Because divorce is still a legal matter (and probably will be for the foreseeable future), the services of an attorney would still be necessary. However, my hope is that the other

possible disputes related to the divorce would also be resolved by mediation. Whether or not the parents are successful in accomplishing this, the custody dispute (the focus of my three-step proposal) could not be dealt with—at any of the three levels—by proceedings within the adversary system.

Appeals Panel

The crucial question remains as to whether the findings and recommendations of the panel should be binding. On the one hand, one could argue that even three people could make a mistake (the nine member United States Supreme court often has made what it subsequently came to realize were mistakes) and the parents should be free to enter into adversarial proceedings in order to appeal to a higher authority. On the other hand, one could argue that the process has to end somewhere and that such a panel, as the next step after mediation, is a good enough place to make final decisions in matters such as custody disputes.

At this point, I am in favor of a plan (again removed from adversarial proceedings) in which there would be the possibility of appeal to another panel of three individuals (again an attorney and two mental health professionals) who would have had significant experience in child custody mediation and arbitration. This panel would have the power to make a final decision. These panel members, as well, would be selected by the clients from a roster provided by the court. Many would be people who had served previously on arbitration panels. This *appeals panel* would involve itself in a two-step process of review. The first step would be similar to that of traditional courts of appeal wherein the members review the documents at the trial court level. At this stage they would have the power to refuse to consider the case further (like the power given to the United States Supreme Court) and then the findings of the arbitration panel would be final. The appeals panel might direct the arbitration panel to collect further data or reconsider its decision because of certain considerations. Or, after reviewing the arbitration panel's documents the appeals panel might consider another hearing warranted and could then hear the parties directly and conduct whatever evaluations were necessary. This could involve interviews as well as other forms of data collection similar to those conducted by the original arbitration panel. The appeals panel might even meet with the arbitration panel and the parents, all together. The appeals panel, as well, might choose to hear parties brought in by the parents, and such parties might include attorneys serving as advocates. However, once again, traditional courtroom procedures of examination would be replaced by open and free discussion (again moderated by the panel, to prevent deterioration of the proceedings). Whereas traditional courts of appeal allow lawyers only to provide testimony, the appeals panel would have the power to interview directly any and all parties it considered useful to hear. And the conclusions of this appeals panel would be final.

In order to discourage frivolous use of the appeals panel it would have to establish for itself the reputation of being quite stringent with regard to the possibility of changing the recommendations of the lower arbitration panel. In addition, litigious individuals would come to appreciate that they not only might not gain from such appeal, but that they might lose in that the panel might take away more than they might give. Another deterrent to the reflex appeal often seen in litigious people would be the panel's practice of reviewing the arbitration panel's records fro the presence of perjury, slander, and libel. In all the years that I had been involved in divorce and custody litigation, there was hardly a case in which I did not see blatant examples of all of these practices. Yet, not once had anyone ever been prosecuted for these crimes. And not once had such behavior even been brought to the attention of the litigants by the court. If the appeals panel were to establish for itself the reputation of reviewing the arbitration panel's records for such behavior, this too could serve as a deterrent for reflex appeal by disgruntled parties.

It should be noted that the three-step procedure I have outlined above (mediation, arbitration panel, and appeals panel) does not involve adversarial proceedings at any level. The system would protect clients from the polarization and spiraling of animosity that frequently accompanies the utilization of adversarial procedures and contributes to the development and perpetuation of psychopathology. It replaces the cumbersome and inefficient method of evidence gathering used by the courts with the more flexible and efficient data-collection process used by mental health professionals. The parents would be given the opportunity to choose their own panel, protecting them thereby from the sense of impotence suffered by parents who are "stuck" with a judge who all recognize to be ill equipped to deal judiciously

with custody conflicts. In short, they choose their own judges. By requiring decisions to be made by the majority of a three-member panel, the likelihood of bias is reduced. Last, and more important, it is a system that precludes any possibility of involvement in adversarial proceedings by people involved in a custody dispute. There would be no such forum for such individuals and the law would thereby protect them from involvement in a system that was never designed to deal with the question of who would serve as a better parent for children of divorce.

Due Process and Constitutional Rights

The system does not deprive the parents of any of their rights of due process guaranteed by the Constitution of the United States. They have the right to representation by counsel at both the arbitration and appeals levels. Nowhere in the Constitution is anyone (including lawyers) given the right to subject another individual to the frustrations and indignities of yes-no questions. (I have sometimes wondered whether yes-no questions deprive witnesses of their right to freedom of speech, guaranteed under the Bill of Rights.) The constitutional right of the accused to confront his (her) accuser is being protected. Even better, in this system the accuser is given the opportunity for direct confrontation with the accused without the utilization of intermediaries (adversary lawyers) and the restriction of courtroom procedures. Although individuals now have the opportunity for such direct confrontations in the courtroom if they represent themselves (pro se) this is not commonly done. In the system I propose the parents are essentially operating pro se. But even when they choose to bring in attorneys to represent them, the discussion will still be far freer than that found in the courtroom.

The constitutional right of a hearing before an impartial judge is being protected. Here, the parents not only have one judge but three (serving in a sense as a tribunal). And protection against bias is enhanced by the requirement that the majority vote will prevail. The requirement that two of the "judges" be mental health professionals is not only desirable for the purposes of the custody evaluation, but is in no way unconstitutional. Nowhere in the Constitution is anything said about the educational or professional requirements that need to be satisfied to serve as a judge. Last, the Constitution presumably guarantees a speedy trial. It requires a morbid expansion of the meaning of the word "speedy" to believe that this constitutional requirement of due process is being protected for the vast majority of litigants in custody disputes. This proposal is more likely to provide such speed, primarily because of the advantages of its method of data collection over that of traditional adversarial courtroom proceedings.

It is important for the reader to appreciate that this proposal is just that, a proposal. It outlines what I consider a reasonable approach to the resolution of custody disputes. I am not claiming that it is perfect and I suspect that if implemented it would probably warrant modification. Although the three-step procedure may appear cumbersome, there is no question that it would prove to be far more efficient and less expensive than adversarial proceedings. Although the plan is designed to protect disputing parents from injudicious judicial decisions, I suspect that the professionals involved in making the custody decisions, being human, will certainly make their share of mistakes. However, I believe that the number of people so harmed will be far less than the number inevitably traumatized by traditional adversary litigation. Although the three-step procedure is more relevant to custody disputes, I believe that the model lends itself well to being applied (with proper modifications) to other kinds of disputes as well.

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About NCCR

The National Council for Children's Rights (NCCR) is a non-profit [IRS 501(c)3] organization, based in Washington D.C. We are concerned with the healthy development of children of divorced and separated parents. For the child's benefit, we seek means of reducing divorce by strengthening families through divorce and custody reform, minimizing hostilities between parents who are involved in marital disputes, substituting conciliation and mediation for the adversarial approach, assuring a child's access to both parents, and providing equitable child support.

NCCR was founded in 1985 by concerned parents who have more than 40 years collective experience in divorce reform and early childhood education. Prominent professionals in the fields of religion, law, social work, psychology, child care, education, and government comprise our Advisory Panel.

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